

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 20.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.80 of 2016

and

CMP No.825 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation
(Salem) Limited,
Bharathipuram,
Dharmapuri 635 001.

...Appellant

Versus

1.Zamuruth Begam
2.Azeena
3.Faiyaz Basha @ Fanaz
4.Minor Riyazh
Minor rep. by next friend mother Zamurth Begam

...Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 02.01.2012 made in M.C.O.P.No.1176 of 2009 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri.

For Appellant :: Mr.D.Venkatachalam

J U D G M E N T

This civil miscellaneous appeal has been taken up for disposal at the stage of admission itself.

2.The Managing Director of the Transport Corporation, Dharmapuri, aggrieved by the impugned award dated 02.01.2012 passed by the Motor Accident Claims Tribunal in MCOP No.1176 of 2009 awarding a sum of Rs.6,02,000/-, as against the claim of Rs.10,00,000/-, for the loss of life of the bread winner of the claimants' family, has brought this appeal on the sole ground that the learned Tribunal has wrongly fixed Rs.4,500/- as the notional monthly income, without any sufficient documentary evidence to show that the deceased was earning that much at the time of the accident. He would further submit that the learned Tribunal, without discussing anything about the contributory negligence made by the deceased, as he suddenly crossed the road without seeing the bus, resulting in the accident, had wrongly put the blame and negligence on the driver of the offending vehicle belonging to the Transport Corporation. Therefore, he

pleaded that such an approach adopted by the learned Tribunal is required to be interfered with by this court. He would further submit that the learned Tribunal, solely considering the evidence of P.W.1 being the wife of the deceased and who is not an eyewitness to the occurrence, has held that the accident had occurred only due to the rash and negligent driving by the driver of the offending vehicle. Therefore, the said approach of the learned Tribunal is required to be interfered with.

3. But this court hardly finds any merits on the submissions made by the learned counsel for the appellant Transport Corporation. The reason is that when the deceased Kamal Basha was walking on the left side of the road in Kannandahalli near Reasool Bai Tea stall towards Kannandahalli junction road on 24.04.2009 at about 8 p.m., the offending bus bearing Registration No. TN-29-N-2072, belonging to the appellant corporation, being driven in a rash and negligent manner was the cause for the accident as a result, the deceased sustained fatal injuries to his vital organs. However though he was taken to the Government Hospital, Krishnagiri, and given treatment, he died on the same day at about 10 p.m. The post mortem certificate marked as Ex.A2 given by Government Hospital, Krishnagiri shows that he has suffered fatal injuries all over his body. Immediately after the accident, FIR was filed on the file of Mathur police and a case was registered under sections 279 and 304(A) IPC in Crime No.372/2009. Therefore, the learned Tribunal, considering the FIR marked as Ex.A1 dated 25.04.2009 which clearly held that the driver was responsible for the fatal accident, has rightly found fault with the driver for his negligence. Therefore, this court finds no error or infirmity in the said finding.

4. With regard to the quantum of compensation, the wife of the deceased Kamal Basha P.W.1 had deposed that prior to the accident, her husband was working as Electrician and he was also doing motor mechanic repair works and thus, he was earning a sum of Rs.7,000/- per month. When P.W.1, the wife of the deceased, came and deposed that her husband contributed his entire monthly salary of Rs.7000/- to her family and after his death, the whole family has been put to irreparable loss, as there was no rebuttable evidence from the respondent, the learned Tribunal, going by the ruling of the Apex Court in Sarla Verma vs. Delhi Transport Corporation, 2009 ACJ 1298, has come to the conclusion that Rs.4500/- can be taken as the notional monthly income of the deceased, which in my considered opinion, cannot be found fault with. Again, the learned Tribunal applying the same ratio has rightly applied the proper multiplier '14', as the age of the deceased falls between 41-45. After fixing the notional income of the deceased at Rs.4500/-, adopting multiplier 14, the learned Tribunal has also deducted 1/4th of the income towards personal and living expenses of the deceased, since four persons

are dependents in his family. Therefore, that finding also, cannot be challenged by the appellant. Finally, the learned Tribunal has also awarded a sum of Rs.25,000/- towards loss of consortium. This amount also, in my considered opinion, cannot be assailed as unreasonable. Similarly a small amount of Rs.15,000/- has been awarded towards loss of estate, Rs.5000/- towards funeral expenses. Therefore, this Court hardly finds any merits in the appeal. Hence, the award of the Tribunal is confirmed and accordingly, the civil miscellaneous appeal is dismissed. No costs. The connected miscellaneous petition is also dismissed.

5.It appears that the appellant has deposited a sum of Rs.25,000/- before the Tribunal. Therefore, the appellant Transport Corporation is directed to deposit the balance amount along with interest at 7.5% p.a. within a period of four weeks from the date of receipt of a copy of this order to the credit of MCOP No.1176 of 2009 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri. On such deposit, it is open to the claimants to withdraw the amount by moving appropriate application before the Tribunal.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
The Motor Accident Claims Tribunal,
Principal District Judge,
Krishnagiri.

+1 cc to Mr.D.Venkatachalam Advocate sr.3174

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